IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1532 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT THRO' VINAY V CHAUDHARI

Versus

SAIYED AMIRUDDIN ALIMUDDIN

Appearance:

1. Criminal Appeal No. 1532 of 2003

MR AJ DESAI APP for Petitioner No. 1

MR AD SHAH for MR LR PATHAN for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 25/03/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

#. The appellant-State of Gujarat has challenged in this

appeal the impugned judgment and order dated 28.11.2003 passed by learned Additional Special Judge, Special Court (POTA), Ahmedabad on 28.11.2003 in Criminal Misc. Application No.2902/03 releasing the respondent-accused on bail on certain terms and conditions mentioned in it.

#. After passing the order of bail on 28.11.2003, the learned Additional Special Judge, Special Court (POTA), Ahmedabad himself stayed the operation of his order on 1.12.2003 to enable the State of Gujarat to approach this court. Thereafter, on 15.12.2003 while admitting this appeal, the impugned order dated 28.11.2003 passed by the learned Additional Special Judge, Special Court (POTA), Ahmedabad was stayed by this court till final disposal of this appeal.

#. Today, when the matter was called out for final hearing, it was brought to our notice by learned APP, Mr.Desai that during the pendency and final disposal of this appeal, the police has filed charge sheet against the respondent-accused on 2.1.2004. Thus, the accused is now fully armed with all the relevant papers to plead his case at the time of trial.

#. Serious grievance was made by learned APP, Mr.Desai for the appellant-State of Gujarat that in undue haste the learned Special Judge ordered to release the respondent-accused on bail at the time when the charge sheet was not filed. He had also submitted that the learned Special Judge would have been in a better position to pass appropriate and proper order after the charge sheet was filed. We are conscious that if we pass any adverse order in this appeal against the respondent-accused, then it may come in the way of the respondent-accused even at the time of trial. Considering this, learned counsel for the parties principally agreed that without recording any reasons and expressing any opinion about the legality and validity of the impugned order passed by the learned Special Judge releasing the respondent-accused on bail, the said order be quashed and set aside and the learned Special Judge be directed to consider and decide the bail application filed by the respondent-accused afresh.

#. Under the circumstances, without expressing any opinion regarding the legality and validity of the impugned order passed by the learned Additional Special Judge, the impugned order dated 28.11.2003 passed by the learned Additional Special Judge, Special Court (POTA), Ahmedabad in Criminal Misc. Application No.2902/03 is hereby quashed and set aside with a direction to the

learned Judge to hear and decide the fresh bail application of the respondent-accused strictly in accordance with law. It goes without saying that the learned Judge will not be swayed away either by this order or the earlier order passed by him releasing the respondent-accused on bail while deciding the fresh bail application. He shall decide fresh bail application only on merits and strictly in accordance with law by dealing with all the contentions raised before him by both the parties. Accordingly this appeal is disposed of.

(B.J.Shethna, J.)

(J.R.Vora, J.)

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